

REMARKS

Re-examination and favorable reconsideration in light of the above amendments and the following comments are respectfully requested.

Claims 1 and 4 - 7 remain in the application. Currently, no claim has been allowed. By the present amendment, claims 5 and 6 have been amended.

In the office action mailed December 26, 2003, claims 1 and 4 - 7 were rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1 and 3 - 6 of U.S. Patent No. 6,420,509. Further, claims 1 and 4 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gajewski (599) in view of Ulrich; and claims 1 and 4 - 7 were rejected under 35 U.S.C. 102(b) in view of Gillis.

The foregoing rejections are traversed by the present response.

With regard to the rejection on the grounds of obviousness type double patenting, it is an improper

teach or suggest eliminating the volumetric mix ratio set forth in the claims of the '509 patent. Absent such a teaching the rejection fails. The fact that the primary reference is applicants' own prior patent does not relieve the Examiner of the burden of making a proper obviousness rejection.

The rejection of claims 1 and 4 over Gajewski (599) and Ulrich also fails because the Examiner has failed to set forth a prima facie case of obviousness. As noted by the Examiner in the office action, Gajewski differs from the claims by showing diphenylmethane diisocyanate in a list with six other preferred diisocyanates for making the prepolymers. The Examiner notes that in the examples, Gajewski uses TDI. The Examiner attempts to say that it would be obvious to replace TDI with MDI in polyurethanes in view of Gajewski (599). The rejection fails because Ulrich is non-enabling in so far as manufacturing polyurethane compounds of the type set forth in the claims. Ulrich does not teach one in what quantities and what types

diphenylmethane diisocyanate content, and a second component comprising an amine curing agent consisting of a blend of diamines. It is submitted that one of ordinary skill in the art would not be led to manufacture a polyurethane compound of the type set forth in claim 1 after reviewing Gajewski (599) and Ulrich.

Claim 4 is allowable over Gajewski and Ulrich for the same reasons as claim 1 as further, because, the references do not teach or suggest that the first and second components when in an uncured state are in a liquid form at room temperature.

With regard to the rejection of claims 1 and 4 - 7 over Gillis, applicants repeat the argument that was made in the parent case. The Gillis patent, particularly in example 1, does not teach or suggest the second component set forth in claim 1, namely the amine curing agent consisting of a blend of diamines. If the Examiner believes that Gillis teaches this component, she is requested to more fully explain where Gillis does this.

For these reasons, the claims in the instant application are believed to be in condition for allowance. Such allowance is respectfully solicited.

Should the Examiner believe an additional amendment is needed to place the case in condition for allowance, he is invited to contact Applicants' attorney at the telephone number listed below.

No fee is believed to be due as a result of the instant response. Should the Commissioner determine that a fee is due, he is hereby authorized to charge said fee to Deposit Account No. 21-0279.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, DC 20231

on March 24, 2003
(Date of Deposit)

Nicole Motzer
Name and Reg. No. of Attorney

Nicole Motzer
Signature

March 24, 2003
Date of Signature

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

5. (Amended) The polyurethane compound according to claim 1, wherein said first component has a NCO content in the range of from [about] 11.5% to [about] 14.5%.

6. (Amended) The polyurethane compound according to claim 5, wherein said NCO content is in the range of from [about] 12% to [about] 14%.

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